

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BRIGHT PEOPLE FOODS DBA DR.
MCDOUGALL'S RIGHT FOODS,

No. 2:24-cv-00060 WBS AC

Plaintiff,

ORDER

v.

ALLIANCE SALES & MARKETING MW,
INC., and DOES 1 TO 20,

Defendant.

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Defendant-counterclaimant Alliance Sales & Marketing moves for leave to amend its answer and counterclaims, seeking to add an additional counterclaim for violation of the Independent Wholesale Sales Representatives Contractual Relations Act of 1990, Cal. Civil Code § 1738.10. (Docket No. 17.)

Leave to amend should be granted "freely . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave should only be denied if amendment (1) would cause prejudice to the opposing party, (2) is sought in bad faith, (3) would create

1 undue delay, or (4) is futile. Chudacoff v. Univ. Med. Ctr. of
2 S. Nev., 649 F.3d 1143, 1152 (9th Cir. 2011).

3 Plaintiff argues that the proposed amended counterclaim
4 fails to state a claim and therefore amendment would be futile.
5 This argument conflates futility with the separate issue of
6 failure to state a claim under Rule 12(b) (6). Leave to amend
7 should be denied as futile when "no set of facts can be proved
8 under the amendment to the pleadings that would constitute a
9 valid and sufficient claim or defense." Missouri ex rel. Koster
10 v. Harris, 847 F.3d 646, 656 (9th Cir. 2017). Plaintiff has
11 failed to make this required showing of futility.

12 Good cause appearing, the motion for leave to file an
13 amended answer and counterclaims (Docket No. 17) is hereby
14 GRANTED. Defendant is directed to file its amended answer and
15 counterclaims within fourteen days of the issuance of this
16 Order.¹

17 IT IS SO ORDERED.

18 Dated: August 6, 2024

19 
20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE

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27 ¹ The court declines to deem as filed the proposed
28 pleading provided with the motion, which defendant must
separately file forthwith.